IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 27001 of 2007(M)

OS.101/2004 of SUB COURT, PATHANAMTHITTA
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PETITIONER:

LALI MOL, D/O.SARAMMA, AGED 37 YEARS,
KOLLAKKAPUTHEN VEEDU, ATTARIKOM MURI,
OMALLOOR VILLAGE.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS:
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1. P.K.JOYKUTTY,S/O.LATE MATHAI,
KOLLAKAPUTHEN VEEDU,ATTARIKOM MURI,
OMALLOOR VILLAGE.

2. K.M.VEROSILOVE,S/O.LATE MATHAI,
KOLLAKAPUTHEN VEEDU,ATTARIKOM MURI,
OMALLOOR VILLAGE.

3. K.M.USHAKUTTY,D/O.LATE MATHAI,
KOLLAKAPUTHEN VEEDU,ATTARIKOM MURI,
OMALLOOR VILLAGE.

4. K.M.MOLIKUTTY,D/O.LATE MATHAI,
THONDALIL HOUSE, KEEAKUZHI,
THATTAYIL P.O. PANDALAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.27001 of 2007

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Dated this the 11th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order of the Subordinate Judge, Pathanamthitta whereby he refused amendment of the plaint. Mother and one of the daughters filed a suit for partition and during the pendency of the suit, mother died. It is averred that the second plaintiff and defendants 2 to 4 are the legal representatives of the deceased mother and that 1/3rd right of the mother will equally devolve upon the second plaintiff and defendants 2 to 4. In order to effect an amendment to that effect, an application was filed. The court dismissed the application stating that no steps were taken at the appropriate time and PW1 has been examined.

2. It is true that under the amended Civil Procedure Code, application for amendment has to be filed before the trial commences. Proviso would state that the amendment can be

allowed if the parties inspite of due diligence could not have raised such a contention. Here is a case where for a proper disposal of the case, the present amendment is necessary. Because it is during the pendency of the suit that the first plaintiff dies. Devolution of her right is to be taken into consideration at the time of final disposal of the suit. Otherwise, it will amount to multiplicity of proceedings and would cause embarrassment to all.

3. Therefore, in the interest of justice, amendment requires to be allowed. Therefore, Writ Petition is allowed. The order under challenge is set aside and the amendment is allowed. The trial court shall direct the plaintiff to carry out the amendment. Needless to say that the defendants be permitted to file additional written statement in support of their contentions on the basis of the amendment.

Writ Petition is disposed of as above.

M.N.Krishnan,
Judge.

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